

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Capital One Financial Corporation,

Plaintiff,

v.

John A. Kanas and John Bohlsen,

Defendants.

Civil Action No. 1:11-cv-750 (LO/TRJ)

**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION
TO STRIKE AND SUBSTITUTE AMENDED FILING**

Plaintiff Capital One Financial Corporation (“Capital One”) respectfully moves to strike Capital One’s Response to Defendants’ Motion for Leave to File Under Seal (ECF No. 55) and its exhibit (ECF No. 55-1) and remove them from the docket because the exhibit was erroneously filed. Capital One respectfully requests that it be allowed to re-file its Response to Defendants’ Motion for Leave to File Under Seal as a new docket entry—the sole difference in the amended filing would be that Plaintiff will replace the exhibit formerly designated ECF No. 55-1 with a newly redacted version of Plaintiff’s First Amended Responses to Defendants’ First Set of Interrogatories, which is attached to this Memorandum as Exhibit A. Defendants John A. Kanas and John Bohlsen do not oppose this motion.

On February 17, 2012, Capital One filed a Motion to Compel Interrogatory Responses. ECF No. 41. On February 22, 2012, Defendants filed their Opposition to Capital One’s motion to compel. ECF No. 48. In conjunction with their opposition, Defendants filed a Motion for Leave to File Documents Under Seal, asking this Court to file under seal five documents that contained information designated by one of the parties as “confidential” or “highly confidential”

under the Agreed Protective Order (ECF No. 20). ECF No. 50. Two of those documents had been designated confidential by Capital One: (1) Capital One's First Amended Responses to Defendants' First Set of Interrogatories and (2) an excerpt from the transcript of the deposition of Lynn Carter. *See* Declaration of C. Sires, ECF No. 49-2.

On February 23, 2012, Capital One filed its Response to Defendants' Motion for Leave to File Documents Under Seal ("Response"), stating that it did not oppose the public filing of the excerpt from the Carter deposition transcript, but that it did wish to protect from public disclosure certain portions of its First Amended Responses to Defendants' First Set of Interrogatories. ECF No. 55. Capital One attached a redacted version of its interrogatory responses, which protected from public disclosure certain information about customers and other proprietary and confidential information contemplated by the Agreed Protective Order. ECF No. 55-1. On February 28, 2012, Capital One further supported its position that this information should not become part of the public record by filing the Declaration of Brent M. Timberlake in Support of Capital One's Response to Defendants' Motion for Leave to File Documents Under Seal. ECF No. 60. On March 5, 2012, in relevant part, this Court granted Defendants' Motion for Leave to File Documents Under Seal with respect to Capital One's redacted interrogatory responses to the extent of the redactions contained in ECF No. 55-1. ECF No. 66.

Capital One erroneously failed to redact certain confidential information in the redacted interrogatory responses filed as an exhibit to its Response. In this Motion, Capital One thus seeks to strike the filing and remove it from the docket and to be allowed to re-file its Response and an amended exhibit that correctly redacts all confidential information. Capital One respectfully requests that this Court's March 5 order (ECF No. 66) apply with the same force to the redactions in the amended exhibit.

Counsel for Capital One contacted counsel for Defendants, who represented that they would not oppose the filing of this motion.

Capital One waives hearing on this motion.

Respectfully submitted,

Dated: March 6, 2012

/s/ Jason C. Schwartz
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March, 2012, I will electronically file the foregoing with the Clerk of the Court for the Eastern District of Virginia using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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